

PATENT
IBM Docket No. JP920010333US1

REMARKS

Claims 1-26 remain in the application, although claims 5-15 and 19-21 stand withdrawn from consideration.

Applicants respectfully request that the rejection of the claims presented be reconsidered and withdrawn in light of the discussion which follows and that the application be found in condition for immediate allowance.

Claims 1-4, 16-18 and 22-26 stand rejected under 35 USC Section 103(a) over United States patent 5,672,952 to Szepesi (hereinafter referred to as "Szepesi") in view of United States patent 6,803,746 to Aker et al. (hereinafter referred to as "Aker"). Applicants contend these rejections are improper as specified below.

The Aker Reference is Defective as Prior Art

Although the present application was filed in the United States two and a half weeks after the Aker reference, the present application claims priority under 35 U.S.C. §119 to a Japanese application filed November 27, 2001. Indeed, the Examiner has acknowledged perfection of such claim to foreign priority in the Official Action mailed May 10, 2004 (Paper No. appears to be 20040430). Therefore, the effective date of the present application is November 27, 2001, almost an entire year prior to the effective date of Aker (November 4, 2002).

Pertinent portions of 35 U.S.C. §119 are provided immediately below for convenience and clarity:

... (a) An application for patent for an invention filed in this country by any person who has ... filed an application for a patent for the same invention in a foreign country which affords similar privileges in the case of applications filed in

PATENT
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the United States or to citizens of the United States, or in a WTO member country, **shall have the same effect as the same application would have if filed in this country on the date on which the application for patent for the same invention was first filed in such foreign country [bold emphasis provided]**, if the application in this country is filed within twelve months from the earliest date on which such foreign application was filed; . . .


Accordingly, the Aker reference is invalid as Prior Art and should be removed as a reference. As all rejections are based on the Aker reference, Applicants believe all claims are drawn to patentable subject matter and request that all rejections be withdrawn.

Request to Proceed to Allowance

For each and all of the reasons set forth above, and as Applicants believe each and all of Examiner's rejections have been rendered moot, Applicants respectfully request that this response be considered, entered, and a timely notice of allowance be issued.

The Examiner is urged to call the undersigned at the below-listed telephone number if, in the Examiner's opinion, such a phone conference would expedite or aid in the prosecution of this application.

Respectfully Submitted,



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- 11 -